

1 REX DARRELL BERRY, State Bar No. 110219  
2 SCOTT M. PLAMONDON, State Bar No. 212294  
3 BERRY & BLOCK LLP  
4 2150 River Plaza Drive, Suite 415  
5 Sacramento, CA 95833  
6 (916) 564-2000  
7 (916) 564-2024 FAX

6 Attorneys for Defendants  
WALGREEN CO.

**UNITED STATES DISTRICT COURT**

**IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 BARBARA HUBBARD, ) Case No. 08-cv-0072 JM POR  
12 Plaintiff, )  
13 v. )  
14 WALGREEN CO. dba WALGREENS ) **DEFENDANT, WALGREEN CO.'S**  
#06255; 1 HUNTER, LLC; 1 LAKE, LLC; ) **ANSWER TO PLAINTIFF'S**  
15 Defendants. ) **COMPLAINT**  
16 )  
 ) *Complaint Filed: 1/11/08*  
 )  
 )

17 Defendant, Walgreen Co. (“Walgreens”), for its answer and affirmative defenses to  
18 Plaintiff, Barbara Hubbard’s (“Plaintiff” or “Hubbard”), Complaint, admits, denies, and sets forth  
19 affirmative defenses as follows:

## SUMMARY

21 1. Paragraph 1 contains no charging allegations, therefore no answer is necessary, and on  
22 that basis the allegations of Paragraph 1 are denied.

23 2. Paragraph 2 contains no charging allegations, therefore no answer is necessary, and on  
24 that basis the allegations of Paragraph 2 are denied.

## JURISDICTION

26 | 3. Walgreens admits that venue and jurisdiction is proper in this Court.

27 4. Walgreens denies the allegations contained in Paragraph 4 of Plaintiff's Complaint on the  
28 basis that it calls for a legal conclusion for which no answer is necessary.

1 5. Walgreens denies the allegations contained in Paragraph 5 of Plaintiff's Complaint on the  
2 basis that it calls for a legal conclusion for which no answer is necessary.

3 **VENUE**

4 6. Walgreens admits that this case arises in San Diego County, California, and is therefore  
5 properly assigned to the San Diego Division of the United States District Court, Southern District  
6 of California.

7 **PARTIES**

8 7. Walgreens admits that it is a corporation and that it operates the store identified as  
9 Number 06255 at 621 "I" Street, Chula Vista, California. Walgreens denies the remaining  
10 allegations contained in this paragraph.

11 8. Walgreens is without sufficient information or knowledge to form a belief as to the truth  
12 of the allegation that Hubbard has multiple conditions and requires the use of a motorized  
13 wheelchair and mobility-equipped vehicle while traveling in public, or that Hubbard is  
14 "physically disabled," and on that basis, denies this allegation. The remaining allegations  
15 contained in Paragraph 8 contain legal conclusions for which no answer is necessary, and on that  
16 basis the remaining allegations of Paragraph 8 are denied.

17 **FACTS**

18 9. Walgreens admits that the Store is a retail establishment and that it offers services to the  
19 public. Walgreens denies the remaining allegations contained in Paragraph 9.

20 10. Walgreens is without sufficient information or knowledge to form a belief as to the truth  
21 of the allegation that Hubbard visited the Walgreens location in Chula Vista, California and on  
22 that basis denies this allegation. The remaining allegations contained in Paragraph 10 contain  
23 legal conclusions for which no answer is necessary, and on that basis Walgreens denies these  
24 allegations.

25 11. Walgreens is without sufficient information or knowledge to form a belief as to the truth  
26 of the allegation that Hubbard visited the Walgreens location in Chula Vista, California and on  
27 that basis denies this allegation. The remaining allegations contained in Paragraph 11 contain  
28

///

1 legal conclusions for which no answer is necessary, and on that basis Walgreens denies these  
2 allegations.

3 12. Walgreens is without sufficient information or knowledge to form a belief as to the truth  
4 of the allegation that Hubbard visited the Walgreens location in Chula Vista, California and on  
5 that basis denies this allegation. The remaining allegations contained in Paragraph 12 contain  
6 legal conclusions for which no answer is necessary, and on that basis Walgreens denies these  
7 allegations.

8 13. Walgreens denies the allegations contained in Paragraph 13 of Plaintiff's Complaint.

9 14. Walgreens denies the allegations contained in Paragraph 14 of Plaintiff's Complaint.

10 15. Walgreens denies the allegations contained in Paragraph 15 of Plaintiff's Complaint.

## 11 FIRST CLAIM

### 12 Americans with Disabilities Act of 1990

#### 13 Denial of "Full and Equal" Enjoyment and Use

14 16. Defendant repeats, realleges, and incorporates its prior responses to Paragraphs 1 through  
15 15, inclusive.

16 17. Paragraph 17 contains only legal conclusions, and as such, no answer is necessary, and on  
17 that basis the allegations of Paragraph 17 are denied.

18 18. Walgreens denies the allegations contained in Paragraph 18 of Plaintiff's Complaint.

#### 19 Failure to Remove Architectural Barriers in an Existing Facility

20 19. Paragraph 19 contains only legal conclusions, and as such, no answer is necessary, and on  
21 that basis the allegations of Paragraph 19 are denied.

22 20. Paragraph 20 contains only legal conclusions, and as such, no answer is necessary, and on  
23 that basis the allegations of Paragraph 20 are denied.

24 21. Walgreens denies the allegations contained in Paragraph 21 of Plaintiff's Complaint.

25 22. Walgreens denies the allegations contained in Paragraph 22 of Plaintiff's Complaint.

#### 26 Failure to Design and Construct an Accessible Facility

27 23. Walgreens is without sufficient information or knowledge to form a belief as to the truth  
28 of the allegation that the Store was designed or constructed after January 26, 1992, and on that

1 basis denies this allegation. The remaining allegations contained in Paragraph 23 are only legal  
2 conclusions, and as such, no answer is necessary, and on that basis the allegations of Paragraph 23  
3 are denied.

4 24. Paragraph 24 contains only legal conclusions, and as such, no answer is necessary, and on  
5 that basis the allegations of Paragraph 24 are denied.

6 25. Walgreens denies the allegations contained in Paragraph 25 of Plaintiff's Complaint.

7 Failure to Make an Altered Facility Accessible

8 26. Paragraph 26 contains only legal conclusions, and as such, no answer is necessary, and on  
9 that basis the allegations of Paragraph 26 are denied.

10 27. Paragraph 27 contains only legal conclusions, and as such, no answer is necessary, and on  
11 that basis the allegations of Paragraph 27 are denied.

12 28. Walgreens denies the allegations contained in Paragraph 28 of Plaintiff's Complaint.

13 Failure to Modify Existing Policies and Procedures

14 29. Paragraph 29 contains only legal conclusions, and as such, no answer is necessary, and on  
15 that basis the allegations of Paragraph 29 are denied.

16 30. Walgreens denies the allegations contained in Paragraph 30 of Plaintiff's Complaint.

17 31. Paragraph 31 contains no charging allegations, therefore no answer is necessary.

18 Walgreens denies that Plaintiff is entitled to any relief whatsoever. For these reasons the  
19 allegations of Paragraph 31 are denied.

20 32. Paragraph 32 contains no charging allegations, therefore no answer is necessary.

21 Walgreens denies that Plaintiff is entitled to any relief whatsoever. For these reasons the  
22 allegations of Paragraph 32 are denied.

23 **SECOND CLAIM**

24 **Disabled Persons Act**

25 33. Defendant repeats, realleges, and incorporates its prior responses to Paragraphs 1 through  
26 32, inclusive.

27 34. Paragraph 34 contains no charging allegations, therefore no answer is necessary, and on  
28 that basis the allegations of Paragraph 34 are denied.

1 35. Paragraph 35 contains no charging allegations, therefore no answer is necessary, and on  
2 that basis the allegations of Paragraph 35 are denied.

3 36. Paragraph 36 contains only legal conclusions, and as such, no answer is necessary, and on  
4 that basis the allegations of Paragraph 36 are denied.

5 37. Walgreens denies the allegations contained in Paragraph 37 of Plaintiff's Complaint.

6 38. Paragraph 38 contains no charging allegations, therefore no answer is necessary.

7 Walgreens denies that Plaintiff is entitled to any relief whatsoever. For these reasons the  
8 allegations of Paragraph 38 are denied.

9 39. Paragraph 39 contains no charging allegations, therefore no answer is necessary.

10 Walgreens denies that Plaintiff is entitled to any relief whatsoever. For these reasons the  
11 allegations of Paragraph 39 are denied.

12 **THIRD CLAIM**

13 **Unruh Civil Rights Act**

14 40. Defendant repeats, realleges, and incorporates its prior responses to Paragraphs 1 through  
15 39, inclusive.

16 41. Paragraph 41 contains no charging allegations, and as such, no answer is necessary, and on  
17 that basis the allegations of Paragraph 41 are denied.

18 42. Paragraph 42 contains no charging allegations, therefore no answer is necessary, and on  
19 that basis the allegations of Paragraph 42 are denied.

20 43. Paragraph 43 contains no charging allegations, therefore no answer is necessary, and on  
21 that basis the allegations of Paragraph 43 are denied.

22 44. Paragraph 44 contains no charging allegations, therefore no answer is necessary, and on  
23 that basis the allegations of Paragraph 44 are denied.

24 45. Paragraph 45 contains no charging allegations, therefore no answer is necessary, and on  
25 that basis the allegations of Paragraph 45 are denied.

26 46. Walgreens denies that took any action, or failed to take any action that resulted in  
27 Plaintiff's alleged damages. Walgreens denies that Plaintiff has been damaged, and further denies  
28 that Plaintiff is entitled to any relief whatsoever.

1 47. Paragraph 47 contains no charging allegations, therefore no answer is necessary.  
2 Walgreens denies that Plaintiff is entitled to any relief whatsoever. For these reasons the  
3 allegations of Paragraph 47 are denied.

4 **FOURTH CLAIM**

5 **Denial of Full and Equal Access to Public Facilities**

6 48. Defendant repeats, realleges, and incorporates its prior responses to Paragraphs 1 through  
7 47, inclusive.

8 49. Paragraph 49 contains no charging allegations, therefore no answer is necessary, and on  
9 that basis the allegations of Paragraph 49 are denied.

10 50. Paragraph 50 contains no charging allegations, therefore no answer is necessary, and on  
11 that basis the allegations of Paragraph 50 are denied.

12 51. Paragraph 51 contains only legal conclusions, and as such, no answer is necessary, and on  
13 that basis the allegations of Paragraph 51 are denied.

14 52. Paragraph 52 contains only legal conclusions, and as such, no answer is necessary, and on  
15 that basis the allegations of Paragraph 52 are denied.

16 **AFFIRMATIVE DEFENSES**

17 **FIRST AFFIRMATIVE DEFENSE**

18 As a first affirmative defense, Walgreens pleads that Plaintiff's Complaint and each and  
19 every claim purportedly set forth therein, fails to state facts sufficient to constitute a claim or  
20 claims upon which relief can be granted.

21 **SECOND AFFIRMATIVE DEFENSE**

22 As a second affirmative defense, Walgreens pleads that Plaintiff's claims are barred, in whole or  
23 in part, by the applicable statute of limitations.

24 **THIRD AFFIRMATIVE DEFENSE**

25 As a third affirmative defense, Walgreens pleads that Plaintiff failed to exhaust all the  
26 administrative remedies that were prerequisites to filing this action, and therefore this action is  
27 barred.

28 / / /

**1 FOURTH AFFIRMATIVE DEFENSE**

2 As a fourth affirmative defense, Walgreens pleads that the Complaint, and each purported  
3 claim contained therein, is barred by the doctrine of laches.

**4 FIFTH AFFIRMATIVE DEFENSE**

5 As a fifth affirmative defense, Walgreens pleads that the Complaint, and each purported  
6 claim contained therein, is barred by the doctrine of unclean hands.

**7 SIXTH AFFIRMATIVE DEFENSE**

8 As a sixth affirmative defense, Walgreens pleads that the Complaint, and each purported  
9 claim contained therein, is barred and/or damages are limited or precluded by, the doctrine of  
10 after-acquired-evidence.

**11 SEVENTH AFFIRMATIVE DEFENSE**

12 As a seventh affirmative defense, Walgreens pleads that the Complaint, and each  
13 purported claim contained therein, is barred by the doctrines of estoppel and/or waiver.

**14 EIGHTH AFFIRMATIVE DEFENSE**

15 As an eighth affirmative defense, Walgreens pleads that damages, if any, were brought  
16 about by Plaintiff's own conduct, not the conduct of Walgreens or any of its supervisors, agents  
17 or employees.

**18 NINTH AFFIRMATIVE DEFENSE**

19 As a ninth affirmative defense, Walgreens pleads that California's laws regarding the  
20 conduct alleged in the Complaint, and each purported claim therein, are too vague to permit the  
21 imposition of punitive damages and thereby deny due process, impose criminal penalties without  
22 requisite constitutional protections, violate the Fourteenth Amendment of the United States  
23 Constitution, and place an unreasonable burden on interstate commerce.

**24 TENTH AFFIRMATIVE DEFENSE**

25 As a tenth affirmative defense, Walgreens pleads that any alleged damages were caused in  
26 whole or in part by the fault of another entity and/or party or nonparty.

27    ///

28    ///

1 WHEREFORE, reserving the right to allege any further affirmative defenses that become  
2 apparent during discovery and having fully answered the Complaint, Walgreens prays that  
3 Plaintiff's claims be dismissed with prejudice and that Plaintiff take nothing thereby; that  
4 Walgreens be awarded judgment in its favor and its attorneys' fees and costs incurred in defense  
5 of this action; and such other relief in Walgreens' favor as the Court deems just and proper.

6

7 DATED: February 15, 2008

BERRY & BLOCK LLP

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

By /s/ Scott M. Plamondon  
REX DARRELL BERRY  
SCOTT M. PLAMONDON  
Attorneys for Defendant, WALGREEN  
CO.